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Attorneys for Defendants
C. R. Bard, Inc. and
Bard Peripheral Vascular, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

IN RE: Bard IVC Filters Products Liability
Litigation,

No. 2:15-MD-02641-DGC

**DEFENDANTS' SEPARATE
STATEMENT OF FACTS IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT AS TO
PLAINTIFFS DORIS AND ALFRED
JONES'S CLAIMS**

DORIS JONES and ALFRED JONES, a
married couple,

(Assigned to the Honorable David G.
Campbell)

Plaintiffs,

v.

C. R. BARD, INC., a New Jersey
corporation and BARD PERIPHERAL
VASCULAR, INC., an Arizona
corporation,

Defendants.

Pursuant to Fed. R. Civ. P. 56(c), Local Rule 56.1(a), and Case Management Order No. 53 (Doc. 5770), Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively “Bard”) respectfully submit this Separate Statement of Facts in Support of Motion for Summary Judgment as to Plaintiffs Doris and Alfred Jones’s Claims.

1. Plaintiff Doris Jones received a Bard Eclipse® Filter (the “Filter”) [REDACTED] [REDACTED] (Ex. A, Plaintiff Fact Sheet of Plaintiff Doris Jones (hereinafter “PFS”), at §§ II.2(a), II.3; Ex. B, Selected Plaintiff Medical Records, at JONESD_MUMC_MDR01287-88).

2. The Filter is not sold directly to patients. (Ex. C, Eclipse Filter Instructions for Use (the “Eclipse IFU”) at page 1.)

3. In 2006, before the Filter was implanted, Ms. Jones experienced [REDACTED] [REDACTED] (Ex. B, Selected Plaintiff Medical Records, at JONESD_UFHJ_MDR00266).

4. In 2009, Ms. Jones was [REDACTED] [REDACTED] (*Id.* at JONESD_MUMC_MDR01548-1549).

5. Despite her doctors’ earlier advice, [REDACTED] [REDACTED] (*Id.* at JONESD_MUMC_MDR00452-456).

6. She had also previously been told [REDACTED] [REDACTED] (*Id.* at JONESD_MUMC_MDR00723).

7. In August 2010, Ms. Jones again [REDACTED] [REDACTED] [REDACTED] (*Id.* at JONESD_MUMC_MDR01287-88).

8. Ms. Jones’ implanting physician, Dr. Anthony Avino, testified that [REDACTED] [REDACTED]

1 [REDACTED]
2 [REDACTED] (Ex. D,
3 March 23, 2017, Deposition Transcript of Anthony Avino, M.D. (“Avino Dep. Tr.”) at
4 110:22 to 113:25.)

5 9. [REDACTED]
6 [REDACTED] (Ex. B, Selected Plaintiff Medical Records, at
7 JONESD_MUMC_MDR01287-88).

8 10. Dr. Avino testified that [REDACTED]
9 [REDACTED]
10 (*Id.* at ¶ #). [REDACTED] (Ex. D, Avino Dep. Tr. at 54:14 to
11 55:8.)

12 11. [REDACTED] (Ex. B, Selected Plaintiff Medical
13 Records, at JONESD_MUMC_MDR01287-88).

14 12. Dr. Avino testified that he does not recall ever reading the IFU. (Ex. D,
15 Avino Dep. Tr. at 47:21-23)

16 13. Dr. Avino was “generally familiar with IVC filter IFUs, if they warn of
17 things like fractures, migration, perforation, tilt; complications like that,” and began
18 implanting IVC filters during his residency, 20 years before he implanted Ms. Jones’
19 filter. (*Id.* at 8:16-23; 29:15-25; 48:2-7.)

20 14. The Eclipse IFU applicable in August 2010 (when Plaintiff received her
21 Filter) included the following warnings:

- 22 • Under the bolded heading “**Warnings**” the Eclipse® IFU reads as
23 follows:
- 24 • Filter fractures are a known complication of vena cava filters. There
25 have been some reports of serious pulmonary and cardiac complications
26 with vena cava filters requiring the retrieval of the fragment utilizing
endovascular and/or surgical techniques.

27 (Ex. C, Eclipse IFU at p. 2.)

28 //

22, 2014 Dr. Robert McMeeking Deposition Transcript, at 149:9-13).

23. As the plaintiffs' experts recognize, "[e]very filter can have a complication;" therefore, it would be "unrealistic" for a physician implanting a Bard IVC filter to expect that the filter would never migrate, tilt, perforate, or fracture. (Ex. E, Muehrcke Dep. Tr. at 102:16 to 103:2).

24. The Filter was cleared by the FDA for retrievable use on January 14, 2010, through the 510(k) process outlined in the Food, Drug, and Cosmetic Act. (Ex. H, August 29, 2005 FDA Clearance Letter¹).

RESPECTFULLY SUBMITTED this 28th day of August, 2017.

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 Bard Peripheral Vascular, Inc.**

¹ Available at https://www.accessdata.fda.gov/cdrh_docs/pdf9/K093659.pdf, last accessed August 25, 2017.

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of August 2017, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

s/Richard B. North, Jr.
Richard B. North, Jr.